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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1938

JOHN M. TAYLOR, OSCAR A. KENNEDY and H. RUSSEL HASTINGS, as the Independent Committee for the Protection of the Holders of Preferred Stock of Deep Rock Oil Corporation, Debtor,

Petitioners,

vs.

STANDARD GAS AND ELECTRIC COMPANY; REORGANIZATION COMMITTEE OF DEEP ROCK OIL CORPORATION; H. N. GREIS, Trustee of Deep Rock Oil Corporation; and DEEP ROCK OIL CORPORATION,

Respondents.

No. 312

BRIEF ON BEHALF OF STANDARD GAS AND ELECTRIC COMPANY, RESPONDENT, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

NATHAN A. GIBSON,
R. M. CAMPBELL,
WILBUR J. HOLLEMAN,
Counsel for Respondent.

LINCOLN PRINTING COMPANY, CHICAGO—WABASH 6004.

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To the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

I.

INTRODUCTORY STATEMENT

Respondent, Standard Gas and Electric Company, respectfully shows to the Court that the petition for writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit, filed herein, does not comply with the rules of this Honorable Court or its decisions as to stating a question upon which a writ should be granted.

The petition in reality is only an argumentative request for a re-trial of a purely personal or private controversy which has heretofore been tried by the District Court in which the case originated, and by the Circuit Court of Appeals for the Tenth Circuit. And further the petition appears to pray that this Court legislate for future controversies upon questions and matters not involved in this cause.

The matter involved is the approval of a plan of reorganization of Deep Rock Oil Corporation, a Delaware corporation, and, as a part of the plan of reorganization, the compromise of a claim of Standard Gas and Electric Company, presented to the Trustee in bankruptcy, and subsequently, after submission to the stockholders of Deep Rock Oil Corporation and its creditors, considered and approved by the District Court for the Northern District of Oklahoma, and upon appeal from that decision, affirmed by the Circuit Court of Appeals for the Tenth Circuit. We respectfully submit that this application comes within none of the conditions provided for such applications by the decisions of this Court and does not involve any matter of gravity or general importance. The petition does not recite a conflict between the decisions of State and Federal Courts, or between decisions of Federal Courts of different Circuits, and does not recite any matter of general interest to the public as ground for granting the writ of certiorari.

The petition for the writ seeks to have a re-trial of the issues tried in the Courts below, and to have this Court determine that, under the facts contained in the record, the instrumentality rule would operate to destroy the right of Standard Gas and Electric Company to claim any part of the amount demanded by it. The record fails to show any statement of facts justifying the application of this rule. The instrumentality rule is merely

the application of well known principles to facts which may exist in any question under consideration. No fixed rule can be declared which will be applicable to all conditions, but the rule will be applied only to facts as they exist in any particular case. By the determination of two Courts upon the facts in this cause, this rule has been found either not to be applicable or that its applicability is of such debatable nature as to justify the compromise which was proposed and agreed upon.

II.

STATEMENT OF FACT

We deem it would be an imposition upon the Court and therefore unnecessary to recite the facts in the cause at length in view of the concise and excellent statement of fact contained in the opinion of the Circuit Court of Appeals in this cause. 96 Fed. 2d, 693 R. Vol. I, pp. 478-491. But, to supplement the facts as stated in the opinion of the Circuit Court of Appeals, we call the Court's attention to these salient facts: a plan of reorganization of Deep Rock Oil Corporation was proposed by the Debtor aided by a protective committee with which committee there had been deposited approximately 60 per cent of the Preferred Stock of the corporation and approximately 80 per cent of an issue of $10,000,000 of notes of the corporation which represented substantially all of its indebtedness except that claimed to be due to Standard Gas and Electric Company.

Numerous forms of plans for reorganization were considered, and finally the plan as proposed, Record II-717, with minor changes subsequently made, was submitted to the Court and under its permission transmitted to stockholders and creditors of Deep Rock Oil Corporation.

More than the requisite majority of the holders of Preferred Stock and of the notes of Deep Rock Oil Corporation either expressly or tacitly approved the plan. The only substantial objection was made by the committee which is a petitioner in this cause and its predecessors, William H. Taylor and John M. Taylor, who intervened in the cause on the 20th day of February, A. D. 1935, protested against the plan of reorganization then being considered and thereafter proposed, and who have, since that time, continued their objection. The original objectors, William H. Taylor and John M. Taylor, owned 550 shares of Preferred Stock of Deep Rock Oil Corporation, Vol. I. 99-100, out of 50,000 shares outstanding, which shares they purchased in the year 1928. After the controversy had progressed for many months, John M. Taylor, one of the members of the committee, presenting the petition herein, was shown by the evidence, Record II-558, to hold 1261 shares of such Preferred Stock much of which had been acquired while the litigation was in progress in the District Court.

The Preferred Stock represented by the committee is approximately 20 per cent of the total Preferred Stock issued.

Standard Gas and Electric Company filed its claim against Deep Rock Oil Corporation, Record I-51, on the 22nd day of June, 1934, shortly after the institution of the bankruptcy proceedings in which it claimed an indebtedness due it from Deep Rock Oil Corporation of $9,342,642.37 with interest accruing thereon.

Subsequently, after this cause had been in progress for many months, it was considered desirable to attempt a reorganization of Deep Rock Oil Corporation, and, as a part of a plan of reorganization, a compromise of this indebtedness was proposed by Standard Gas and Electric Company, and the plan of reorganization submitted to

the creditors and stockholders of Deep Rock Oil Corporation carried with it the approval of this compromise as part of the plan.

As finally proposed, the amount which Standard Gas and Electric Company offered to accept in compromise of its claim consisted of moneys paid by Standard Gas and Electric Company to third persons for the benefit of Deep Rock Oil Corporation, and of moneys invested by Standard Gas and Electric Company in properties held in the name of Trustees, which, by the terms of the compromise, it proposed to transfer and convey to the Trustee in Bankruptcy or to Deep Rock Oil Corporation, as might be directed. (See opinion of the Circuit Court of Appeals, Vol. I, pp. 478-491.)

III.

ARGUMENT

A. Assertion is made in the petition that the trustee never passed upon or recommended the adoption of the compromise. The record, Volume II, page 523, disclosed this question propounded to Greis, the Trustee, and his response:

> Question by Mr. Honigman:
>
> Q. "Are you, Mr. Greis, taking the position you have no recommendation to make on the Standard claim?"
>
> A. "I am leaving that to my counsel."

From the beginning of the proceedings, George S. Ramsey, Esq., had represented the Trustee and, before the appointment of the Trustee, the receivers in equity. In an extended statement made by him, Record Volume II, page 561-2, immediately following the statement by

the Trustee that his counsel would speak for him as to the compromise, he made the following statements:

> "First, I represent the trustee and concur with Mr. Gibson in recommending this settlement to the Court. I want to say this much that I regard that settlement as a good settlement * * *. Now on the instrumentality law in approving this settlement, your Honor don't have to pass on that. It is folly to talk about passing on the merits of the case and approving a compromise * * *. * * * you commence with this situation about which there is no disputing that the Shaffer Oil and Refining Company, the former name of Deep Rock, was not organized as a department or agency of Standard * * *. The assets and property of Standard and Deep Rock were never commingled. So when you get down to the compromise, as Mr. Gibson said, we went over this, and this compromise doesn't allow the Standard any of these items that are contested by the trustee * * * so taking this whole thing into consideration, I don't think the Court would be justified and after you have added up all of the Standard's claims will run the claim to over $12,000,000. I don't believe it is good business to bet six or seven million dollars that the Court will uphold the instrumentality rule. Now that is my honest opinion about it. So far as I am personally concerned, I prefer to fight it out but when it comes to my responsibility to the courts and the creditors and the parties, I want to tell you my honest judgment is that it is a good compromise."

B. There can be no question about the authority of the District Court under the provisions of Sec. 27 of the Bankruptcy Act, as amended—11 U.S.C.A. 50 and of 77B —11 U.S.C.A. 207(a) to approve a compromise. This compromise was recommended by the trustee through his counsel. Section 77B expressly provides, in referring to the jurisdiction of the Courts in bankruptcy, that they shall "have exclusive jurisdiction of the Debtor and its property, wherever located, for the purposes of this Sec-

tion and shall have and may exercise all the powers not inconsistent with this Section which a Federal Court would have had it appointed a receiver in equity of the property of the Debtor by reason of its inability to pay its debts as they mature." There can be no question about the right of a Federal Court sitting in equity in the matter of the administration of a receivership instituted in such cause to authorize its receiver to compromise any claim and such action will not be disturbed upon appeal unless there is a clear abuse of discretion. High on Receivers, 4th Edition, Section 177; Remington on Bankruptcy, Volume II, Section 1147; Clark on Receivers, Volume II, Second Edition, page 1157; Gilbert's Collier on Bankruptcy, Third Edition, page 567. Many of the District Courts and Circuit Courts of Appeal have passed upon similar cases and so decided them. *Riggi Bros. Company, Inc.,* 42 Fed. 2d, 174; *West* v. *Radio-Keith-Orpheum,* 68 Fed. 2d, 869; *Drexel* v. *Loomis,* 35 Fed. 2d, 800; *Pullman Couch Company* v. *Eshelman,* 1 Fed. 2d, 885; *In re McCrory Stores Corporation,* 14 Fed. Supplement, 739; *In re Burns Bros.,* 14 Fed. Supp. 910. The facts adjudicated by the Courts have been determined to justify the compromise of the claim. This authority has been determined by the opinion of the Circuit Court of Appeals in this cause and is no longer in controversy. Record Vol. I, pp. 478-491.

C. There is no attempt to show that any of the conditions required by Rule 38 of this Honorable Court to be necessary to justify the granting of a writ of certiorari exist. There is no decision of a Circuit Court of Appeals in conflict with that of another on the same matter; there is no important question of local law in any way probably in conflict with applicable local decisions; there has been no decision of an important question of general law in any way probably untenable or in conflict with the weight of authority; there has been no decision of an

important question of Federal law which has not been but should be settled by this Court; there has been no decision of a Federal Court probably in conflict with another decision of this Court; there has been no decision which departed from the accepted and usual course of judicial proceedings. The decisions of this Court on this subject have been so uniform that they may be well summarized by the language of *Fields* v. *United States,* 205 U. S. 292, 51 L. Ed. 807, in which Justice Brewer says:

> "The application comes within none of the conditions therefor declared in the decisions of this Court. However important the case may be to the applicant, the question involved is not one of gravity or general importance. There is no conflict between the decisions of State and Federal Courts or between those of Federal Courts of different Circuits. There is nothing effecting the relations of this nation to foreign nations and indeed no matter of general interest to the public."

Substantially to the same effect, and in many instances in substantially the same language, are the decisions of this Court in *ex parte Woods,* 143 U. S. 202, 36 L. Ed. 125; *American Construction Company* v. *Jacksonville T. and K. W. Railway Company,* 148 U. S. 372, 37 L. Ed. 486; *Forsyth* v. *Hammond,* 166 U. S. 506, 41 L. Ed. 1095; *Houston Oil Company* v. *Goodrich,* 245 U. S. 440, 62 L. Ed. 385; *U. S.* v. *Rimer,* 220 U. S. 547, 55 L. Ed. 178; *Layne and Bowler Corporation* v. *Western Well Works,* 261 U. S. 387, 67 L. Ed. 712; *Ivory Novelties Trading Company* v. *Coty,* 262 U. S. 159, 67 L. Ed. 922; *U. S.* v. *Johnston,* 268 U. S. 220, 69 L. Ed. 925; *Humble Oil and Refining Company* v. *Campbell,* 292 U. S. 648, 78 L. Ed. 1498; (In which the petition was denied and the brief of the petitioner and respondent stricken, apparently by reason of their length) *Southern Power Company* v. *North Carolina Public Service Company,* 263 U. S. 508, 68 L. Ed. 413.

IV.

CONCLUSION

We, therefore, respectfully submit to the Court that there has been no determination by the trial court or Circuit Court of Appeals which is not proper in the exercise of the power conferred upon them by the acts of Congress; that the findings of fact, as made in the opinion of the Circuit Court of Appeals, show conclusively that there were debatable questions as to the validity of the claim of Standard Gas and Electric Company which properly served as the basis for a compromise; that the welfare of the Debtor, Deep Rock Oil Corporation, and its stockholders was properly considered in the approval of this compromise by the District Court and the affirmance by the Circuit Court of Appeals; that there is in the petition herein a total failure to call to the attention of this Court any decision or act in the entire course of this litigation which has constituted or can be considered an abuse of discretion by either the District Court or the Circuit Court of Appeals, and that there is a total lack of any of the elements which this Court has so long, by Rule 38, and its repeated construction of the rule, declared to be essential to procure the issuance of a writ of certiorari, and we, therefore, respectfully submit that the petition should be denied.

N. A. Gibson,
R. M. Campbell,
Wilbur J. Holleman,
Counsel for Respondent, Standard Gas and Electric Company.